Calendar No. 1130

100TH CONGRESS *2d Session*	SENATE	REPORT 100-595

MARINE SANCTUARIES AUTHORIZATION ACT OF 1988

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

OF THE

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 2761

OCTOBER 7 (legislative day, OCTOBER 6), 1988.—Ordered to be printed

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REPORT

[To accompany S. 2761]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2761) to authorize appropriations to carry out title III of the Marine Protection, Research, and Sanctuaries Act of 1972 during fiscal years 1989, 1990, 1991, and 1992, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill do pass.

PURPOSE OF THE BILL

S. 2761 would authorize appropriations for and improve the effectiveness of title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA).

BACKGROUND AND NEEDS

Title III of the MPRSA was enacted in response to growing concern about the increasing degradation of marine habitats. It provides for the protection of important and sensitive marine areas and resources of national significance through the establishment of marine sanctuaries. The purpose of these sanctuaries is to preserve or restore such areas for their conservation, recreational, ecological, or aesthetic value. The National Marine Sanctuaries Program provides the only opportunity to designate, manage, and protect entire marine ecosystems, although other programs provide for the protection and management of individual resource components such as fish or marine mammals.

Title III of the MPRSA authorizes the Secretary of Commerce (Secretary) to designate marine sanctuaries. The National Oceanic

and Atmospheric Administration (NOAA) is responsible for implementing title III and does so through the Office of Marine and Estuarine Management. Sites eligible for designation as sanctuaries may be located in either State or Federal waters from the outer limit of the U.S. Exclusive Economic Zone inland to the tidal limit, or in the Great Lakes.

SPECIAL USE PERMITS

The primary objective of the National Marine Sanctuaries Program is to protect nationally significant marine resources. However, NOAA has implemented a policy of promoting multiple uses of sanctuaries whenever these uses prove to be compatible with resource protection. The recent growth of commercial and public uses in several sanctuaries has complicated the management of these areas. S. 2761 establishes a special use permit system to address this problem.

ASSESSMENT AND RECOVERY OF DAMAGES TO SANCTUARY RESOURCES

In recent years, two accidents have caused significant damage to marine sanctuary resources. These events involved the grounding of a freighter, the M/V *Wellwood*, in Key Largo National Marine Sanctuary and the grounding and rupture of an oil tanker, the M/V *Puerto Rican*, near the Farallones National Marine Sanctuary. In both incidents, NOAA sued and collected large cash settlements for the damage done to the sanctuaries. However, since NOAA lacks the explicit authority to recover monetary damages for destruction done to sanctuary resources, the settlement monies were returned to the Treasury. S. 2761 authorizes the Secretary to retain and expend awards from damages for various sanctuary purposes.

ENFORCEMENT

Title III of the MPRSA grants broad authority to NOAA to conduct "necessary and reasonable" enforcement activities. However, it does not explicitly contain many of the specific authorities of other resource statutes enforced by NOAA, such as the Magnuson Fishery Conservation and Management Act and the Marine Mammal Protection Act of 1973. S. 2761 amends title III to provide more uniform enforcement authority under statutes that protect living resources in marine and coastal waters and the Great Lakes.

SANCTUARY DESIGNATION

Controversy over the site designation process has plagued the program since its inception. While the Secretary has designated seven sanctuaries since the program was initiated, only one sanctuary has been designated during the past 7 years. In 1980, Congress amended the Act to streamline and improve the process. However, continued concern about site designation resulted in additional amendments in 1984 that established specific procedures and standards to be employed in designating sanctuaries. Despite these changes, concerns persist regarding the pace and administration of the designation process. S. 2761 establishes a schedule for the designation of several proposed sanctuaries that are currently under consideration by NOAA.

Legislative History

A hearing to review the Marine Sanctuaries Program was held by the full Committee and the National Ocean Policy Study on June 8, 1988. Senator Hollings introduced S. 2761 on September 8, 1988. On September 20, 1988, the Committee, in open executive session, considered S. 2761. Senator Kerry offered two amendments to the bill. The first amendment called for the Secretary to issue a notice of marine sanctuary designation for Flower Garden Banks off Texas. The second amendment called for the Secretary to prepare a marine sanctuary prospectus for Stellwagen Bank off Massachusetts. After agreeing to each of the proposed amendments, the Committee ordered S. 2761 reported as amended without objection.

Summary of Major Provisions

As reported, S. 2761 would: (1) reauthorize title III of the MPRSA for 4 years, with funding set at $3 million in fiscal year (FY) 1989 and increasing to $4,500,000 in FY 1992; (2) provide a mechanism for controlling specific sanctuary activities which cannot adequately be controlled under current provisions of title III; (3) permit funds that are recovered for resource damages to be expended by NOAA for various sanctuary uses; (4) modify the enforcement provisions of title III to make them more consistent with the other statutes protecting living marine resources; and (5) provide a specific schedule for the designation of four new sanctuaries.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office.

U.S. Congress,
Congressional Budget Office,
Washington, DC, September 27, 1988.

Hon. Ernest F. Hollings,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for S. 2761, the National Marine Sanctuaries Program Authorization Act of 1988.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

James L. Blum,
Acting Director.

Congressional Budget Office Cost Estimate

1. Bill number: S. 2761.
2. Bill title: The National Marine Sanctuaries Program Authorization Act of 1988.
3. Bill status: As ordered reported by the Senate Committee on Commerce, Science, and Transportation, September 20, 1988.

4. Bill purpose: S. 2761 would authorize marine sanctuary programs administered by the National Oceanic and Atmospheric Administration (NOAA). S. 2761 would also authorize the appropriation of $3 million for 1989, $3.5 million for 1990, $4 million for 1991, and $4.5 million for 1992 to NOAA sanctuary act programs.

The bill would also make several amendments to the marine sanctuaries act affecting the administration of sanctuaries and establishing new sources of funds for these programs. The new funding sources would include:

Special Use Permits.—Section 3 would authorize NOAA to establish a special use permit program for commercial operations—such as glass bottom boats and diving trips—in sanctuaries. NOAA would be authorized to charge a fee for the permits; the fee would be set to recover administrative costs, the "fair market value" of the use of the resource, and a reasonable return to the government.

Damages Collections.—Under current law, the amounts recovered for damages to marine sanctuaries are deposited in the general fund for the Treasury. This bill would make the amounts recovered available without appropriation to NOAA for restoration of the sanctuary and reimbursement for clean-up costs.

Civil Penalties.—The bill would make all civil penalties recovered under the sanctuaries act available without appropriation to NOAA. Under current law, civil penalties for marine sanctuary offenses are classified as miscellaneous receipts and deposits in the general fund of the Treasury.

In addition, S. 2761 would amend other provisions of the marine sanctuaries act, including new provisions affecting civil forfeitures.

5. Estimated Cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1989	1990	1991	1992	1993
Authorizations of appropriations:					
Authorization level	3.0	3.5	4.0	4.5	.....
Estimated outlays	2.0	3.1	3.7	4.3	1.4
Direct spending:					
Estimated budget authority		0.1	0.2	0.4	0.4
Estimated outlays		0.1	0.2	0.4	0.4
Total:					
Authorization level/budget authority	3.0	3.6	4.2	4.9	0.4
Estimated outlays	2.0	3.2	3.9	4.7	1.8

The costs of this bill would be in budget function 300. This table does not include spending of any collections resulting from future damage settlements, which CBO cannot estimate. Such amounts are not likely to be substantial.

Basis of estimate: For the authorizations of appropriations, this estimate assumes that the full amounts authorized would be appropriated for each fiscal year. The estimated outlays are based on historical spending patterns.

The estimated direct spending effect is based on information provided by NOAA. The budget authority shown in the table above results from collections of damages and civil penalties. Estimated collections resulting from special use permit fees are not shown in the table because they would be offset by higher spending and, therefore, would have no net effect on the budget.

The provisions of S. 2761 regarding damage collections would affect a case that has already been settled. The case involved a vessel, the *Wellwood,* that ran aground and damaged a marine sanctuary in Florida. The owners of the *Wellwood* settled for $6.3 million in 1986, payable at graduated amounts over 15 years. NOAA would receive $5.6 million of this total, which includes $1.2 in civil penalties and $4.4 million for damages and restoration costs. Payments to NOAA would not begin until 1990, because the first $620,000 of the settlement will reimburse the Coast Guard for towing costs.

CBO cannot estimate the effect of future settlements of damage cases involving marine sanctuaries, because these events are infrequent and unpredictable. As with the existing settlements, however, the amounts recovered in any settlement would reflect costs of clean-up and repair, damages, and civil penalties. Spending from the recovered amounts is not likely to be substantial.

We expect that collections from the special use permits would cover administrative costs, and bring in some additional amount, possibly around $1 million to $2 million annually, depending on the structure and amount of the fee. The fees would have no net effect on the federal budget, however, because all collections would be spent on marine sanctuary programs.

The reclassification of receipts from civil penalties would not affect the amounts collected, but would increase federal outlays because the amounts collected would be available to NOAA. The money involved is not significant, however. Aside from the substantial collections associated with settlements like the *Wellwood*, penalties associated with the sanctuaries act have averaged around $20,000 annually in recent years.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: On June 22, 1988, CBO prepared an estimate for H.R. 4208, the National Marine Sanctuaries Program Authorization Act, as ordered reported by the House Committee on Merchant Marine and Fisheries, June 14, 1988. The lower estimated outlays in this estimate reflect a lower authorization level and a difference in the collections for damages that could be spent without appropriations.

9. Estimate prepared by: Michael Sieverts.

10. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

Regulatory Impact Statement

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

NUMBER OF PERSONS COVERED

Section 3 of this legislation establishes a system of special use permits for marine sanctuaries. The number of persons that could be affected by this provision encompasses the entire range of sanctuary users, from large-scale commercial ventures to the infrequent, individual, recreational visitors. The Committee expects that the special use permit system will be established in a manner that complements existing sanctuary regulations. The permit system will be directed toward limiting human use or redirecting this use within a sanctuary in such a way as to reduce the cumulative effects of chronic overuse on discrete sites or resources.

Section 6 of this legislation requires the Secretary to issue notices of marine sanctuary designation for selected areas. Once completed, the establishment of these sanctuaries could affect a large number of individuals. In the vast majority of cases, the effect will be negligible, as sanctuary designation will provide positive action toward the preservation of ecological and cultural resources.

ECONOMIC IMPACT

NOAA will incur a small cost in establishing and enforcing the special use permit system called for in section 3 of this legislation. However, the agency may assess and collect fees under the permit system to offset the cost of the system.

The economic impact of section 6 of this legislation is undetermined and must be calculated on a site-by-site basis. Limitations in use, either through regulation of activities or reduction in use levels, may impact certain sectors of the economy near the sanctuary. However, in general, regional impacts should be minimal. Issues such as economic impact must be fully discussed in the environmental analysis conducted as part of the designation process.

PRIVACY

This legislation will not have an adverse impact on the personal privacy of the individuals affected.

PAPERWORK

Some additional paperwork will be associated with carrying out the requirements of this legislation. However, the Committee anticipates that, by using the existing sanctuary framework, the increase in paperwork will be minimized.

SECTION-BY-SECTION ANALYSIS

SECTION 1.—SHORT TITLE

This section provides the short title, the "Marine Sanctuaries Authorization Act of 1988".

SECTION 2.—AUTHORIZATIONS

This section would amend title III of the MPRSA by redesignating sections 308 and 309 as sections 310 and 311, respectively, and by providing authorizations of $3 million for FY 1989, $3,500,000 for FY 1990, $4 million for FY 1991, and $4,500,000 for FY 1992.

SECTION 3.—SPECIAL USE PERMITS

This section would add a new section 308 to the MPRSA, which authorizes the Secretary to issue special use permits if the Secretary determines that such permits are necessary to establish conditions of access and use, or to promote public use and understanding of the sanctuary. A permit may be granted to conduct an activity for up to 5 years if it is determined that: (1) the activity is compatible with the sanctuary purpose; (2) the activity causes no damage to sanctuary resources; and (3) the permittee obtains liability insurance and holds the government harmless against any such claims. The Secretary may assess and collect fees for the special use permits. Fees collected may be used in administering the permit system, and designating and managing marine sanctuaries.

SECTION 4.—SANCTUARY DESTRUCTION, LOSS, OR INJURY

This section, in subsection (a), adds a new section 309 to the MPRSA which contains provisions for restoring sanctuary resources that are damaged or destroyed.

Subsection (a) of section 309 provides that, except as indicated in paragraph (3) of the subsection, any vessel or person causing damage to or destruction of the resources of a marine sanctuary will be liable to the United States for response costs and damages. The exceptions indicated in paragraph (3) include damage or destruction caused solely by an act of God, an act of war, or an act of omission by a third party. Subsection (c) states that the Secretary will act as trustee for sanctuary resources on behalf of the United States. Subsection (d) enables the Secretary to retain damage awards and establishes priorities for the use of the recovered funds.

Subsection (b) of section 4 of the bill amends section 302 of the MPRSA by adding a number of new definitions to title III.

SECTION 5.—MARINE SANCTUARY ENFORCEMENT

This section amends the existing enforcement authority, section 307, of the MPRSA by further detailing the authorities of the Secretary and the courts. These changes represent a movement toward a uniform enforcement authority for NOAA under statutes protecting living resources in marine and estuarine waters and the Great Lakes. By having uniform enforcement standards, confusion among law enforcement agents is more easily avoided.

SECTION 6.—ACTIONS WITH RESPECT TO NEW SANCTUARIES

This section establishes a schedule for designation of 4 new marine sanctuaries. It requires the Secretary to issue a notice of designation under section 304(b)(1) of the MPRSA with respect to: (1) the proposed Cordell Banks National Marine Sanctuary off California; (2) the proposed Monterey Bay National Marine Sanctuary off California; (3) the proposed Western Washington Outer Coast Marine Sanctuary off the State of Washington; and (4) the proposed Flower Gardens Bank National Marine Sanctuary off Texas.

In addition, the section requires the Secretary to submit prospectuses under section 304(a)(1)(C) of the MPRSA with respect to the proposed Northern Puget Sound National Marine Sanctuary off the

State of Washington and the proposed Stellwagen Bank National Marine Sanctuary off Massachusetts.

SECTION 7.—STUDY OF AREA FOR MARINE SANCTUARY DESIGNATION PURPOSES

This section addresses a site specific study of a potential marine sanctuary. It requires the Secretary to conduct a study to determine if a site along the California coast, commonly referred to as Santa Monica Bay, is appropriate for designation as a marine sanctuary. The Secretary is required to submit a report within 2 years of date of enactment to the Senate Committee on Commerce, Science, and Transportation and the House Committee on Merchant Marine and Fisheries on the findings of the study.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman).

MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT OF 1972

SECTION 302 OF THAT ACT

SEC. 302. DEFINITIONS.

As used in this title, the term—

(1) "damages" includes—

(A) compensation for—

(i)(I) the cost of replacing, restoring, or acquiring the equivalent of a sanctuary resource; and

(II) the value of the lost use of a sanctuary resource pending its restoration, its replacement, or the acquisition of an equivalent sanctuary resource; or

(ii) the value of a sanctuary resource if the sanctuary resource cannot be restored or replaced or if the equivalent of such resource cannot be acquired; and

(B) the cost of damage assessments under section 309(b)(2);

[(1)]*(2)* "draft management plan" means the plan described in [section 304(a)(1)(E)] *section 304(a)(1)(C)(v)*;

[(2)]*(3)* "Magnuson Act" means the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.);

[(3)]*(4)* "marine environment" means those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands over which the United States exercises jurisdiction, consistent with international law;

(5) "response costs" means the costs of actions taken by the Secretary to minimize destruction or loss of, or injury to, a sanctuary resource, or to minimize the imminent risks of such destruction, loss, or injury;

(6) "sanctuary resource" means any living or nonliving resource of a national marine sanctuary that contributes to the

conservation, recreational, ecological, historical, research, educational, or aesthetic value of the sanctuary;

[(4)]*(7)* "Secretary" means the Secretary of Commerce; and

[(5)]*(8)* "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States.

SECTION 307 OF THAT ACT

[SEC. 307. ENFORCEMENT.

[(a) IN GENERAL.—The Secretary shall conduct such enforcement activities as are necessary and reasonable to carry out this title. The Secretary shall, whenever appropriate, utilize by agreement the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities on a reimbursable basis in carrying out the Secretary's responsibilities under this title.

[(b) CIVIL PENALTIES.—

[(1) CIVIL PENALTY.—Any person subject to the jurisdiction of the United States who violates any regulation issued under this title [16 USCS §§ 1431 et seq.] shall be liable to the United States for a civil penalty of not more than $50,000 for each such violation, to be assessed by the Secretary. Each day of a continuing violation shall constitute a separate violation.

[(2) NOTICE.—No penalty shall be assessed under this subsection until the person charged has been given notice and an opportunity to be heard. Upon failure of the offending party to pay an assessed penalty, the Attorney General, at the request of the Secretary, shall commence action in the appropriate district court of the United States to collect the penalty and to seek such other relief as may be appropriate.

[(3) IN REM JURISDICTION.—A vessel used in the violation of a regulation issued under this title shall be liable in rem for any civil penalty assessed for such violation and may be proceeded against in any district court of the United States having jurisdiction thereof.

[(c) JURISDICTION.—The district courts of the United States shall have jurisdiction to restrain a violation of the regulations under this title, and to grant such other relief as may be appropriate. Actions shall be brought by the Attorney General in the name of the United States. The Attorney General may bring suit either on the Attorney General's own initiative or at the request of the Secretary.]

SEC. 307. ENFORCEMENT.

(a) IN GENERAL.—The Secretary shall conduct such enforcement activities as are necessary and reasonable to carry out this title.

(b) POWERS OF AUTHORIZED OFFICERS.—Any person who is authorized to enforce this title may—

(1) with or without a warrant or other process—

(A) board, and search or inspect, any vessel that is subject to the provisions of this title;

(B) seize any vessel (together with its equipment, stores, and cargo) used or employed in, or with respect to which it

reasonably appears that such vessel was used or employed in, the violation of this title or any regulation or permit issued under this title;

(C) seize wherever found any sanctuary resource taken or retained in violation of this title or any regulation or permit issued under this title; and

(D) seize any evidence related to a violation of this title or of any regulation or permit issued under this title;

(2) execute any warrant or other process issued by any court of competent jurisdiction; and

(3) exercise any other lawful authority.

(c) CIVIL PENALTIES.—

(1) CIVIL PENALTY.—Any person subject to the jurisdiction of the United States who violates this title or any regulation or permit issued under this title shall be liable to the United States for a civil penalty of not more than $50,000 for each such violation, to be assessed by the Secretary. Each day of a continuing violation shall constitute a separate violation.

(2) NOTICE.—No penalty shall be assessed under this subsection until after the person charged has been given notice and an opportunity for a hearing.

(3) IN REM JURISDICTION.—A vessel used in violating this title or any regulation or permit issued under this title shall be liable in rem for any civil penalty assessed for such violation and may be proceeded against in any district court of the United States having jurisdiction.

(4) REVIEW OF CIVIL PENALTY.—Any person against whom a civil penalty is assessed under this subsection may obtain review in the United States district court for the appropriate district by filing a complaint in such court not later than thirty days after the date of such order and simultaneously serving a copy of the complaint by certified mail on the Secretary, the Attorney General, and the appropriate United States attorney. Upon being served such a complaint, the Secretary shall promptly file in such court in accordance with section 2112 of title 28, United States Code, a certified copy of the record upon which the violation relating to such complaint was found or such penalty imposed. The findings and order of the Secretary shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

(5) COLLECTION OF PENALTIES.—If any person fails to pay an assessment of a civil penalty under this section after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(6) COMPROMISE OR OTHER ACTION BY SECRETARY.—The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is or may be imposed under this section.

(d) FORFEITURE.—

(1) IN GENERAL.—Any vessel (including its equipment, stores, and cargo) and any other item used, and any sanctuary resource taken or retained, in any manner, in connection with or as a result of any violation of this title or of any regulation or permit issued under this title shall be subject to forfeiture to the United States pursuant to a civil proceeding under this subsection.

(2) APPLICATION OF THE CUSTOMS LAWS.—The Secretary may exercise the authority of any United States official granted by any relevant customs law relating to the seizure, forfeiture, condemnation, disposition, remission, and mitigation of property in enforcing this title.

(3) DISPOSAL OF SANCTUARY RESOURCES.—Any sanctuary resource seized pursuant to this title may be disposed of pursuant to an order of the appropriate court, or, if perishable, in a manner prescribed by regulations issued by the Secretary. Any proceeds from the sale of such sanctuary resource shall for all purposes represent the sanctuary resource so disposed of in any subsequent legal proceedings.

(4) PRESUMPTION.—For the purposes of this section, there is a rebuttable presumption that all sanctuary resources found on board a vessel that is seized in connection with a violation of this title or of any regulation or permit issued under this title were taken or retained in violation of this title or of a regulation or permit issued under this title.

(e) PAYMENT OF STORAGE, CARE, AND OTHER COSTS.—

(1) IN GENERAL.—Notwithstanding any other law, the Secretary may use amounts received under this section in connection with civil penalties, forfeitures of property, and liability for costs imposed under paragraph (2) to pay--

(A) the reasonable and necessary costs incurred by the Secretary in providing temporary storage, care, and maintenance of any sanctuary resource or other property seized under this section pending disposition of any civil proceeding relating to any alleged violation with respect to which such sanctuary resource or other property was seized; and

(B) a reward to any person who furnishes information leading to an assessment of a civil penalty, or to a forfeiture of property, for a violation of this title or of any regulation or permit issed under this title.

(2) LIABILITY FOR COSTS.—Any person assessed a civil penalty for a violation of this title or of any regulation or permit issued under this title, and any claimant in a forfeiture action brought for such a violation, shall be liable for the reasonable costs incurred by the Secretary in storage, care, and maintenance of any sanctuary resource or other property seized in connection with the violation.

(f) SUBPOENAS.—For the purposes of conducting any hearing under this section, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or

refusal to obey a subpoena served upon any person pursuant to this subsection, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order may be punished by such court as contempt.

(g) JURISDICTION.—The district courts of the United States shall have jurisdiction to restrain a violation of this title and regulations and permits issued under this title, and to grant such other relief as may be appropriate.

(h) USE OF RESOURCES OF STATE AND OTHER FEDERAL AGENCIES.—The Secretary shall, whenever appropriate, use by agreement the personnel, services, and facilities of State and other Federal departments, agencies, and instrumentalities, on a reimbursable or nonreimbursable basis, to carry out the Secretary's responsibilities under this section.

(i) COAST GUARD AUTHORITY NOT LIMITED.—Nothing in this section shall be considered to limit the authority of the Coast Guard to enforce this or any other Federal law under section 89 of title 14, United States Code.

(j) INJUNCTIVE RELIEF.—If the Secretary determines that there is an imminent risk of destruction or loss of or injury to a sanctuary resource, or that there has been actual destruction or loss of, or injury to, a sanctuary resource which may give rise to liability under section 309, the Attorney General, upon request of the Secretary, shall seek to obtain such relief as may be necessary to abate such risk or actual destruction, loss, or injury, or to restore or replace the sanctuary resource, or both. The district courts of the United States shall have jurisdiction in such a case to order such relief as the public interest and the equities of the case may require.

NEW SECTION 308 OF THAT ACT

SEC. 308. SPECIAL USE PERMITS.

(a) ISSUANCE OF PERMITS.—The Secretary may issue special use permits which authorize the conduct of specific activities in a national marine sanctuary if the Secretary determines such authorization is necessary—

(1) to establish conditions of access to and use of any sanctuary resource; or

(2) to promote public use and understanding of a sanctuary resource.

(b) PERMIT TERMS.—A permit issued under this section—

(1) shall authorize the conduct of an activity only if the activity is compatible with the purposes for which the sanctuary is designated and with protection of sanctuary resources;

(2) shall not authorize the conduct of any activity for a period of more than 5 years unless renewed by the Secretary;

(3) shall require that activities carried out under the permit be conducted in a manner that does not destroy, cause the loss of, or injure sanctuary resources; and

(4) shall require the permittee to purchase and maintain comprehensive general liability insurance against claims arising out of activities conducted under the permit and to agree to hold the United States harmless against such claims.

(c) FEES.—

(1) ASSESSMENT AND COLLECTION.—The Secretary may assess and collect fees for the conduct of any activity under a permit issued under this section.

(2) AMOUNT.—The amount of a fee under this subsection shall be equal to the sum of—

(A) costs incurred, or expected to be incurred, by the Secretary in issuing the permit;

(B) costs incurred, or expected to be incurred, by the Secretary as a direct result of the conduct of the activity for which the permit is issued, including costs of monitoring the conduct of the activity; and

(C) an amount which represents the fair market value of the use of the sanctuary resource and a reasonable return to the United States Government.

(3) USE OF FEES.—Amounts collected by the Secretary in the form of fees under this section may be used by the Secretary—

(A) for issuing and administering permits under this section; and

(B) for expenses of designating and managing national marine sanctuaries.

(d) VIOLATIONS.—Upon violation of a term or condition of a permit issued under this section, the Secretary may—

(1) suspend or revoke the permit without compensation to the permittee and without liability to the United States;

(2) assess a civil penalty in accordance with section 307; or

(3) both.

(e) REPORTS.—Each person issued a permit under this section shall submit an annual report to the Secretary not later than December 31 of each year which describes activities conducted under that permit and revenues derived from such activities during the year.

(f) FISHING.—Nothing in this section shall be considered to require a person to obtain a permit under this section for the conduct of any fishing activities in a national marine sanctuary.

NEW SECTION 309 OF THAT ACT

SEC. 309. DESTRUCTION OR LOSS OF, OR INJURY TO, SANCTUARY RESOURCES.

(a) LIABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (3), any person who destroys, causes the loss of, or injures any sanctuary resource is liable to the United States for response costs and damages resulting from such destruction, loss, or injury.

(2) LIABILITY IN REM.—Any vessel used to destroy, cause the loss of, or injure any sanctuary resource shall be liable in rem to the United States for response costs and damages resulting from such destruction, loss, or injury.

(3) DEFENSES.—A person is not liable under the subsection if that person can establish that—

(A) the destruction or loss of, or injury to, a sanctury resource was casued solely by an act of God, an act of war, or an act or omission of a third party, and that the person acted with due care;

(B) the destruction, loss, or injury was caused by an activity authorized by Federal or State law; or

(C) the destruction, loss, or injury was negligible.

(b) RESPONSE ACTION AND DAMAGE ASSESSMENT.—

(1) RESPONSE ACTIONS.—The Secretary may undertake all necessary actions to prevent or minimize the destruction or loss of, or injury to, sanctuary resources, or to minimize the immminent risk of such destruction, loss, or injury.

(2) DAMAGE ASSESSMENT.—The Secretary shall asses damages to sanctuary resources in accordance with section 302(1).

(c) CIVIL ACTIONS.—

(1) RECOVERY OF RESPONSE COSTS AND DAMAGES.—The Secretary, acting as trustee for sanctuary resources on behalf of the United States, shall commence a civil action in the United States district court for the appropriate district against any person or vessel who may be liable under subsection (a) for response costs and damages.

(2) VENUE.—Venue for an action under this section lies—

(A) in any district in which the defendant resides or may be found;

(B) in any district in which is located the defendent's principal place of business;

(C) in the district nearest to the national marine sanctuary involved; and

(D) in the case of an in rem action against a vessel, in any district having jurisdiction over the vessel.

(d) USE OF RECOVERED AMOUNTS.—Amounts recovered by the Secretary under this section for response costs and damages and under section 307 for civil penalties shall be retained by the Secretary in the manner provided for in section 107(f)(1) of the Comprehensive Environmental Response, Conpensation, and Liability Act of 1980 (42 U.S.C. 9607(f)(1)), and used as follows:

(1) USE OF AMOUNTS RECOVERED UNDER THIS SECTION.—Amounts recovered under this section shall be used, in order of priority—

(A) to finance response actions and damage assessments by the Secretary involving national marine sanctuaries;

(B) to restore, replace, or acquire the equivalent of the sanctuary resources which were the subject of the action;

(C) to manage and improve the national marine sanctuary within which are located the sanctuary resources which were the subject of the action; and

(D) to manage and improve any other national marine sanctury.

(2) USE OF CIVIL PENALTIES.—Amounts recovered under section 307 in the form of civil penalties shall be used by the Secretary in accordance with section 307(e) and paragraph (1)(C) and (D) of this subsection.

(3) FEDERAL-STATE COORDINATION.—Amounts recovered under this section with respect to sanctuary resources lying within the jurisdiction of a State shall be used under paragraph (1)(B) and (C) in accordance with an agreement entered into by the Secretary and the Governor of that State.

SECTION 310 OF THAT ACT

SEC. [308] *310.* AUTHORIZATION OF APPROPRIATIONS.

To carry out this title, there are authorized to be appropriated:

(1) $3,000,000 for fiscal year 1985.
(2) $3,300,000 for fiscal year 1986.
(3) $3,600,000 for fiscal year 1987.
(4) $3,900,000 for fiscal year 1988.
(5) $3,000,000 for fiscal year 1989.
(6) $3,500,000 for fiscal year 1990.
(7) $4,000,000 for fiscal year 1991.
(8) $4,500,000 for fiscal year 1992.

SECTION 311 OF THAT ACT

SEC. [309] *311.* SEVERABILITY.

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of this Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

○

Calendar No. 1139

100TH CONGRESS *2d Session*	SENATE	REPORT 100-596

ALCOHOLIC BEVERAGE LABELING

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

OF THE

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 2047

OCTOBER 11 (legislative day, OCTOBER 6), 1988.—Ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE
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100TH CONGRESS
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SENATE

REPORT
100-596

ALCOHOLIC BEVERAGE LABELING

OCTOBER 11 (legislative day, OCTOBER 6), 1988.—Ordered to be printed

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 2047]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2047) to require a health warning on the labels of all alcoholic beverage containers, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill do pass.

PURPOSE OF THE BILL

S. 2047, as reported, requires a health warning label on all containers of alcoholic beverages bottled after the date which is 12 months following the date of enactment of the Act. The legislation provides that no health warning statement on containers shall be required under State law, other than the statement provided in the bill.

BACKGROUND AND NEEDS

At the Federal level, responsibility for the regulation of the alcoholic beverage industry is vested by the Federal Alcohol Administration Act (enacted in 1935) (27 U.S.C. 201 et seq.) in the Department of the Treasury, specifically within the Bureau of Alcohol, Tobacco, and Firearms (BATF). That Act contains a section which prohibits the interstate transportation of alcoholic products unless they are labeled in accordance with requirements of the Secretary of the Treasury.

For a number of years, Congress and Federal agencies have considered whether to require that warning labels about various health risks presented by alcohol be placed on alcoholic beverages.

The following are the major legislative/administrative efforts regarding such labels:

In 1967, Senator Strom Thurmond introduced a bill (S. 2500) to require a health warning label on certain alcoholic beverage containers.

In 1977, then-Commissioner of the Food and Drug Administration Donald Kennedy urged BATF to require a warning label regarding the risks of alcohol use during pregnancy. In January 1978, BATF issued an advance notice of proposed rulemaking requiring such a label, and subsequently postponed a decision on whether to order the label pending further study and alcohol industry education campaigns.

On May 7, 1979, the Senate failed (by a vote of 21 yeas, 68 nays) to table an amendment to S. 440 to require beverages containing more than 24 percent alcohol to bear a warning label. Subsequently, that amendment was agreed to by a voice vote.

The legislation passed by the Senate on May 7, 1979 resulted in Public Law 96–180, which required that the Departments of Treasury and Health, Education, and Welfare undertake a report on educational efforts to inform the public of health hazards associated with alcoholic beverages. In November 1980, the Departments of Treasury and Health and Human Services issued that report, rejecting health warning labels at that time.

In September 1979, a Senate Subcommittee on Alcoholism and Drug Abuse staff report recommended that health warning labels be required on all alcoholic beverages to inform consumers of their risks to health, particularly with respect to birth defects from alcohol consumption during pregnancy.

In July 1981, the Surgeon General issued an advisory alerting pregnant women and those considering pregnancy to abstain from alcoholic beverages and to be aware of the alcohol content of food and drugs.

In May 1986, an amendment was adopted in the Senate Labor and Human Resources Committee requiring five rotating warning labels on alcoholic beverages. No action occurred on this bill (S. 2443).

On October 27, 1986, Public Law 99–570 expressed the sense of the Senate that the Public Health Service should report to Congress on the use of labels to educate the public on the health effects of alcohol. In August 1987, the Public Health Service's literature review stated that health warning labels can affect consumer behavior, particularly in combination with other educational efforts, provided the labels are correctly designed.

In January 1987, Senator Dennis DeConcini requested that BATF conduct a study of the public benefit of health warning labels on alcoholic beverage containers. BATF has indicated that it will complete this study by November 30, 1988.

In November 1987, the Senate Judiciary Committee adopted an amendment offered by Senator Thurmond to S. 567, a bill amending the Malt Beverage Interbrand Competition Act. The

amendment was very similar to S. 2047, as introduced. S. 567 was not considered by the full Senate.

In March 1988, Senator Thurmond offered an amendment on the Senate floor to S. 1904, the polygraph bill. The amendment was very similar to S. 2047, as introduced. Senator Thurmond withdrew his amendment, and no vote occurred on the issue.

On August 10, 1988, the Consumer Subcommittee held a hearing on S. 2047 and received testimony from BATF, the Department of Health and Human Services, State officials, medical authorities, and proponents and opponents of requiring health warning labels on alcoholic beverages.

Advocates of alcohol warning labels maintain that the labels are an important part of an overall educational effort to make the public aware of the health risks associated with alcohol consumption. The advocates believe that labels will ensure that the message is consistently before the public, and will provide information to fill in the gaps in the public's awareness of alcohol-related risks. Those who support the legislation cite medical evidence which indicates correlations between alcohol consumption and negative health effects.

Opponents of the labeling requirement state that such labels are ineffective and unnecessary, because they will not alter the behavior of those who abuse alcohol. Rather than require labels, opponents believe that efforts should be addressed to other educational campaigns and initiatives, including programs to train bartenders and others to identify alcohol consumption problems, posters and warning effects, and designated driver programs among students. The opponents maintain that, since labels will not serve an educational purpose as effectively as other initiatives, they impose a cost and burden which are not justified. In addition, the opponents refer to medical evidence which demonstrates positive effects from moderate alcohol consumption.

Testimony presented to the Committee by BATF indicated that well over 100,000 deaths are attributed annually to alcohol consumption, and that the health hazards related to alcohol consumption comprise one of the nation's most serious problems. The Committee determined that the American public should be informed about these health hazards, and that a clear, nonconfusing reminder of these hazards would be beneficial. The Committee believes that the label in the bill, as reported, would achieve these goals.

Legislative History

S. 2047 was introduced by Senator Thurmond on February 4, 1988. The Consumer Subcommittee held a hearing on the legislation on August 10, 1988. In open executive session, the bill was ordered to be reported without objection, with an amendment in the nature of a substitute, on September 20, 1988.

Summary of Major Provisions

The bill, as reported, requires that bottlers affix a warning label to all alcoholic beverage containers bottled 12 months or more after the date of enactment. The label advises of the risks of birth defects in pregnant women, impairment of the ability to operate a

car or other machinery, and other potential health problems resulting from the consumption of alcoholic beverages.

The Secretary of the Treasury (the "Secretary") is vested with authority to enforce the legislation. Violators of this requirement are subject to a civil penalty of $10,000 for each day of violation.

The bill preempts State laws which would require a health warning label on containers of alcoholic beverages other than that provided in the legislation.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office.

U.S. Congress,
Congressional Budget Office,
Washington, DC, September 23, 1988.

Hon. Ernest F. Hollings,
Chairman, Committee on Commerce, Science and Transportation, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 2047, a bill to require a health warning on the labels of all alcoholic beverage containers, as ordered reported by the Senate Committee on Commerce, Science and Transportation, September 20, 1988.

Based on information provided by the Bureau of Alcohol, Tobacco, and Firearms, CBO estimates that enacting S. 2047 would result in no significant cost to the federal government, and in no cost to state or local governments. The bill would require health warning labels on all alcohol beverage containers distributed in the United States.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Michael Sieverts.

Sincerely,

James L. Blum,
Acting Director.

Regulatory Impact Statement

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

The bill, as reported, authorizes the Secretary to prescribe regulations necessary to enforce the Act. Therefore, it is anticipated that alcoholic beverage bottlers will be subject to additional regulatory requirements.

The Committee does not anticipate that the additional cost from imposing the labeling requirement will be significant.

There should be no impact on the personal privacy of individuals affected.

Some additional paperwork will likely be required, to implement any regulations that may be promulgated pursuant to the Act and in the enforcement of the legislation.

SECTION-BY-SECTION ANALYSIS

The bill, as reported, contains one section. Paragraphs (1) and (2) of subsection (a) of the section make technical changes to the Federal Alcohol Administration Act (27 U.S.C. 201 et seq.) necessitated by the addition of a new title, title II, relating to alcohol warning labels. Subsection (b) makes similar technical and conforming changes.

The following discussion relates to the new title II, added by paragraph (3) of subsection (a):

SECTION 201—SHORT TITLE

This section states the short title, the "Alcoholic Beverage Labeling Act of 1988".

SECTION 202—CONGRESSIONAL DECLARATION OF POLICY AND PURPOSE

Section 202 declares Congressional findings that the American public should be informed about health hazards from the consumption or abuse of alcohol, and that it would be beneficial to provide a reminder about such hazards. The Congress further finds that there should be uniformity in such reminders so as to avoid misleading information and minimize burdens on interstate commerce. Requiring such labels is an appropriate part of advancing the Federal Government's interest in promoting the health and safety of the American people.

The policy of this title is to establish a comprehensive Federal program regarding warnings or other information about the relationship between alcoholic beverages and health, through the exercise of the full reach of the Federal Government's constitutional powers. This will inform the public regarding health hazards from alcohol consumption or abuse, and commerce will be furthered since diverse warnings on alcoholic beverage containers will not be required. This comprehensive program will affect alcoholic beverages manufactured and sold in or affecting interstate commerce, including those alcoholic beverages manufactured and sold in a single State.

SECTION 203—DEFINITIONS

This section defines certain terms used in the title, as follows:

(1) "Alcoholic beverage" includes any beverage in liquid form which is intended for human consumption and contains not less than ½ of 1 percent of alcohol by volume. The term is intended to include distilled spirits, beer, wine, and wine coolers, as well as similar products that may emerge. The term does not cover products that contain some element of alcohol, but are not distributed for use as a beverage. The term also does not include cough syrups and similar products that may contain alcohol but are normally considered medicinal in nature.

(2) "Bottle" means to fill and seal a container with an alcoholic beverage.

(3) "Bottler" means a person who bottles an alcoholic beverage.

(4) "Commerce" means interstate commerce, intrastate commerce that affects interstate commerce, and intrastate commerce wholly within the District of Columbia or the territories and possessions of the United States.

(5) "Container" means the innermost sealed container (without regard to the material from which the container is made) in which an alcoholic beverage is placed by a bottler, and in which an alcoholic beverage is offered for sale to the general public. The legislation is drafted to ensure that the obligation to affix the label to the alcoholic beverage is on the bottler (who fills the container with the alcoholic beverage and seals the container), rather than, for example, on those who only sell the product.

(6) "Health" includes the prevention of accidents.

(7) "Person" includes individuals as well as corporate entities, receivers, trustees, liquidating agents, States, and State employees or agencies.

(8) "Sale" and "distribution" include sampling or any other distribution not for sale.

(9) "Secretary" means the Secretary of the Treasury.

(10) "State" includes the District of Columbia, any political subdivision of a State, and the territories and possessions of the United States.

(11) "State law" includes State statutes, regulations and principles and rules having the force of law.

(12) "United States" includes the States, the District of Columbia, and the territories and possessions of the United States.

SECTION 204—LABELING REQUIREMENT; CONSPICUOUS STATEMENT

Subsection (a) of this section requires that, beginning 1 year after the date of enactment of this title, it shall be unlawful for any person to manufacture, import, or bottle for sale or distribution in the United States any alcoholic beverage which does not contain the following statement:

> GOVERNMENT WARNING: (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems.

Testimony at the Committee's hearing indicated that Fetal Alcohol Syndrome is the leading preventable cause of birth defects, and occurs in 1 to 3 per 1,000 live births. Witnesses identified alcohol consumption as altering an individual's perception of risk, an essential part of operating safely automobiles and other machinery. Evidence was also presented that, in some individuals, consumption of alcoholic beverages can cause other health problems. The label the Committee included in the bill, as reported, addresses each of these matters.

The Committee does not intend that the labeling requirement in this subsection require the labeling or relabeling of alcoholic bever-

ages that were bottled prior to the expiration of the 12-month period specified in this subsection.

Subsection (b) requires that, as determined by the Secretary within 90 days after enactment, the above label shall be located in a conspicuous and prominent place on each container of alcoholic beverages, appear on a contrasting background, and be of a certain type size. The Committee specified that these determinations be made within a short time after the enactment of the bill, in order that those with the responsibility to label have as much advance notice as possible regarding the precise requirememts with which they must comply. The Committee also anticipates that the Secretary may consider current regulations and will need to take into account variations in the size and shape of individual containers in making the determinations required by this subsection.

Subsection (c) provides that this labeling requirement does not apply to alcoholic beverage containers for delivery or consumption on an aircraft or vessel beyond the jurisdiction of the internal revenue laws of the United States, except those for sale or distribution to members of the U.S. Armed Forces.

Subsection (d) vests the Secretary with the authority to ensure the enforcement of this title, as well as to issue regulations to carry our the title. In vesting this authority in the Secretary, the Committee does not intend to affect the authority of any other agency or department of the Federal Governmemt; the Committee anticipates, however, that other Federal units will take into account the Secretary's authority under the bill, as reported, when exercising their responsibilities.

In addition, this subsection requires the Secretary to consult and coordinate with the Surgeon General regarding the health awareness efforts of the labeling required by this title.

SECTION 205—PREEMPTION

Section 205 states that no State law may require any statement relating to alcoholic beverages and health, other than the statement required under section 204, on any alcoholic beverage container, or box, carton, or other package that contains such a container.

The Committee emphasizes that the bill, as reported, preempts State law requiring the imposition of statements relating to alcoholic beverages and health on any container or box, carton, or other package which contains a container. The provision should not be read to indicate that the states do not have the authority in other areas to impose standards to protect the health and safety of their citizens from hazards associated with the products they consume. Therefore, the bill should not be construed to affect other requirements of the States with regard to alcoholic beverages or other products (e.g., warning posters or notices in bars or other establishments). Also, the bill does not affect remedies or powers that might be available to the States in their enforcement of these requirements, and does not affect any other requirement under Federal law. The Committee anticipates that other Federal units will take into account the Secretary's authority under the bill, as reported, when exercising their responsibilities.

SECTION 206—REPORTED TO CONGRESS

If the Secretary determines, as a result of investigations and consultations beginning 2 years after the date of enactment of this title and after consultation with the Surgeon General, that available scientific information would justify a change in the label required by this title, the Secretary is to report that information to the Congress. This section will enable the Secretary to apprise the Congress of recent developments in the state of scientific knowledge, so that changes in the warning requirement, if appropriate, may be considered. The Secretary is also to include specific recommendations from amendments to this title, as appropriate.

SECTION 207—CIVIL PENALTIES

Section 207 states that any violation of this title is subject to a civil penalty of not more than $10,000, with each day constituting a separate offense. The Committee does not intend that each improperly labeled container constitute a separate violation, without regard to when the violation occurred.

SECTION 208—INJUNCTION PROCEEDINGS; COMPROMISE OF LIABILITY

Subsection (a) of this section vests the district courts of the United States with jurisdiction to prevent and restrain violations of this title, on the application of the Attorney General of the United States acting through the U.S. district attorneys.

Subsection (b) of this section authorizes the Secretary to compromise the liability arising from any violation of this Act upon payment of a sum, as determined by the Secretary, for each offense.

SECTION 209—SEVERABILITY

This section declares that the invalidation of any provision of this title or its application to any person or circumstances does not affect the validity of the remainder of this title.

SECTION 210—EFFECTIVE DATE

Section 210 provides that the title becomes effective on the date of its enactment. However, the labeling requirement in section 204(a) does not become effective until 12 months after the date of enactment of this title.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

FEDERAL ALCOHOL ADMINISTRATION ACT

TITLE I—FEDERAL ALCOHOL ADMINISTRATION

[That this Act may be cited as the "Federal Alcohol Administration Act."]

SHORT TITLE

SEC. 101. This title may be cited as the "Federal Alcohol Administration Act".

FEDERAL ALCOHOL ADMINISTRATION

SEC. [2] *102.* * * *

UNLAWFUL BUSINESSES WITHOUT PERMIT

SEC. [3] *103.* In order effectively to regulate interstate and foreign commerce in distilled spirits, wine, and malt beverages, to enforce the twenty-first amendment, and to protect the revenue and enforce the postal laws with respect to distilled spirits, wine, and malt beverages:

(a) It shall be unlawful, except pursuant to a basic permit issued under [this Act] *this title* by the Administrator—

(1) * * *

(2) * * *

This subsection shall take effect sixty days after the date upon which the Administrator first appointed under [this Act] *this title* takes office.

(b) It shall be unlawful, except pursuant to a basic permit issued under [this Act] *this title* by the Administrator—

(1) * * *

(2) * * *

This subsection shall take effect sixty days after the date upon which the Administrator first appointed under [this Act] *this title* takes office.

(c) It shall be unlawful, except pursuant to a basic permit issued under [this Act] *this title* by the Administrator—

(1) * * *

(2) * * *

This section shall not apply to any agency of a State or political subdivision thereof or any officer or employee of any such agency, and no such agency or officer or employee shall be required to obtain a basic permit under [this Act] *this title.*

PERMITS

SEC. [4] *104.* (a) * * *

(b) * * *

(c) The Administrator shall prescribe the manner and form of all applications for basic permits (including the facts to be set forth therein) and the form of all basic permits, and shall specify in any basic permit the authority conferred by the permit and the conditions thereof in accordance with the provisions of [this Act] *this title.* To the extent deemed necessary by the Administrator for the efficient administration of [this Act] *this title,* separate applications and permits shall be required by the Administrator with respect to distilled spirits, wine, and malt beverages, and the various classes thereof, and with respect to the various classes of persons entitled to permits hereunder. The issuance of a basic permit under [this Act] *this title* shall not operate to deprive the United States of its remedy for any violation of law.

(d) A basic permit shall be conditioned upon compliance with the requirements of [section 5] *section 105* (relating to unfair competition and unlawful practices) and of [section 6] *section 106* (relating to bulk sales and bottling) with the twenty-first amendment and laws relating to the enforcement thereof, and with all other Federal laws relating to distilled spirits, wine, and malt beverages, including taxes with respect thereto.

(e) through (i) * * *

UNFAIR COMPETITION AND UNLAWFUL PRACTICES

SEC. [5] *105.* * * *

(a) through (d) * * *

(e) * * *

Provided, That this clause shall not apply to the use of the name of any person engaged in business as a distiller, brewer, rectifer, blender, or other producer, or as an importer, wholesaler, retailer, bottler, or warehouseman, of distilled spirits, wine, or malt beverages, nor to the use by any person of a trade or brand name used by him or his predecessor in interest prior to the date of the enactment of [this Act] *this title*; including regulations requiring, at time of release from customs custody, certificates issued by foreign governments covering origin, age, and identity of imported products: *Provided further,* * * *

(f) * * *

BULK SALES AND BOTTLING

SEC. [6] *106.* * * *

PENALTIES

SEC. [7] *107.* The District Courts of the United States, the Supreme Court of the District of Columbia, and the United States court for any Territory, of the District where the offense is committed or threatened or of which the offender is an inhabitant or has his principal place of business, are hereby vested with jurisdiction of any suit brought by the Attorney General in the name of the United States, to prevent and restrain violations of any of the provisions of [this Act] *this title.* Any person violating any of the provisions of [sections 3 or 5] *sections 103 or 105* shall be guilty of a misdemeanor and upon conviction thereof be fined not more than $1,000 for each offense. Subject to the approval of the Attorney General, the Administrator is authorized, with respect to any violation of [this Act] *this title,* to compromise the liability arising with respect to such violation (1) upon payment of a sum not in excess of $500 for each offense, to be collected by the Administrator and to be paid into the Treasury as miscellaneous receipts, and (2) in case of repetitous violations and in order to avoid multiplicity of criminal proceedings, upon agreement to a stipulation that the United States may, on its own motion upon five days' notice to the violator, cause a consent decree to be entered by any court of competent jurisdiction enjoining the repetition of such violation.

INTERLOCKING DIRECTORATES

SEC. [8] *108.* (a) Except as provided in subsection (b), it shall be unlawful for any individual to take office, after the date of the enactment of [this Act] *this title*, as an officer or director of any company, if his doing so would make him an officer or director of more than one company engaged in business as a distiller, rectifier, or blender of distilled spirits, or of any such company and of a company which is an affiliate of any company engaged in business as a distiller, rectifier, or blender of distilled spirits, or of more than one company which is an affiliate of any company engaged in business as a distiller, rectifier, or blender of distilled spirits, unless, prior to taking such office, application made by such individual to the Administrator has been granted and after due showing has been made to him that service by such individual as officer or director of all the foregoing companies of which he is an officer or director together with service in the company with respect to which application is made will not substantially restrain or prevent competition in interstate or foreign commerce in distilled spirits.

(b) * * *. An individual may, without regard to the provisions of subsection (a), take office as an officer or director of a company described in subsection (a) while holding the position of officer or director of any other such company if such companies are affiliates at the time of his taking office and if—

(1) Such companies are affiliates on the date of the enactment of [this Act] *this title*; or

(2) Each of such companies has been organized under the law of a State to comply with a requirement thereof under which, as a condition of doing business in such State, such company must be organized under the law of such State; or

(3) One or more such companies has been organized under the law of a State to comply with a requirement thereof under which, as a condition of doing business in such State, such company must be organized under the laws of such State, and the other one or more of such companies not so organized, is in existence on the date of the enactment of [this Act] *this title*; or

(4) One or more of such companies has been organized under the law of a State to comply with a requirement thereof under which, as a condition of doing business in such State, such company must be organized under the law of such State, and not more than one of such companies is a company which has not been so organized and which has been organized after the date of the enactment of [this Act] *this title.*

(c) through (d) * * *

DISPOSAL OF FORFEITED ALCOHOLIC BEVERAGES

SEC. [9] *109.* * * *

FEDERAL ALCOHOL CONTROL ADMINISTRATION

SEC. [10] *110.* * * *
SEC. [11] *111.* * * *
SEC. [12] *112.* * * *

SEC. [13] *113.* * * *
SEC. [14] *114.* * * *
SEC. [15] *115.* * * *
SEC. [16] *116.* * * *

MISCELLANEOUS

SEC. [17] *117.* (a) As used in [this Act] *this title*—
(1) through (9) * * *

(b) The right to amend or repeal the provisions of [this Act] *this title* is expressly reserved.

(c) If any provision of [this Act] *this title*, or the application of such provision to any person or circumstances, is held invalid, the remainder of the Act and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

TITLE II—ALCOHOLIC BEVERAGE LABELING

SHORT TITLE

SEC. 201. This title may be cited as the "Alcoholic Beverage Labeling Act of 1988".

DECLARATION OF POLICY AND PURPOSE

SEC. 202. The Congress finds that the American public should be informed about the health hazards that may result from the consumption or abuse of alcoholic beverages, and has determined that it would be beneficial to provide a clear, nonconfusing reminder of such hazards, and that there is a need for national uniformity in such reminders in order to avoid the promulgation of incorrect or misleading information and to minimize burdens on interstate commerce. The Congress finds that requiring such reminders on all containers of alcoholic beverages is appropriate and necessary in view of the substantial role of the Federal Government in promoting the health and safety of the Nation's population. It is therefore the policy of the Congress, and the purpose of this title, to exercise the full reach of the Federal Government's constitutional powers in order to establish a comprehensive Federal program, in connection with the manufacture and sale of alcoholic beverages in or affecting interstate commerce, to deal with the provision of warnings or other information with respect to any relationship between the consumption or abuse of alcoholic beverages and health, so that—

(1) the public may be adequately reminded about any health hazards that may be associated with the consumption or abuse of alcoholic beverages through a nationally uniform, nonconfusing warning notice on each container of such beverages; and

(2) commerce and the national economy may be—

(A) protected to the maximum extent consistent with this declared policy,

(B) not impeded by diverse, nonuniform, and confusing requirements for warnings or other information on alcoholic beverage containers with respect to any relationship between the consumption or abuse of alcoholic beverages and health, and

(C) protected from the adverse effects that would result from a noncompetitive program covering alcoholic beverage containers sold in interstate commerce, but not alcoholic beverage containers manufactured and sold within a single State.

DEFINITIONS

SEC. 203. As used in this title—

(1) The term "alcoholic beverage" includes any beverage in liquid form which contains not less than one-half of one percent of alcohol by volume and is intended for human consumption.

(2) The term "bottle" means to fill a container with an alcoholic beverage and to seal such container.

(3) The term "bottler" means a person who bottles an alcoholic beverage.

(4) The term "commerce" means—

(A) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, Wake Island, the Midway Islands, Kingman Reef, or Johnston Island and any place outside thereof;

(B) commerce between points in any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, Wake Island, the Midway Islands, Kingman Reef, or Johnston Island, but through any place outside thereof; or

(C) commerce wholly within the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, Wake Island, the Midway Islands, Kingman Reef, or Johnston Island.

(5) The term "container" means the innermost sealed container irrespective of the material from which made, in which an alcoholic beverage is placed by the bottler and in which such beverage is offered for sale to members of the general public.

(6) The term "health" includes, but is not limited to, the prevention of accidents.

(7) The term "person" means an individual, partnership, joint stock company, business trust, association, corporation, or any other business or legal entity, including a receiver, trustee, or liquidating agent, and also includes any State, any State agency, or any officer or employee thereof.

(8) The terms "sale" and "distribution" include sampling or any other distribution not for sale.

(9) The term "Secretary" means the Secretary of the Treasury.

(10) The term "State" includes any political subdivision of any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, Wake Island, the Midway Islands, Kingman Reef, or Johnston Island.

(11) The term "State law" includes State statutes, regulations, and principles and rules having the force of law.

(12) The term "United States", when used in a geographical sense, includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, Wake Island, the Midway Islands, Kingman Reef, and Johnston Island.

LABELING REQUIREMENT; CONSPICUOUS STATEMENT

SEC. 204. (a) On and after the expiration of the 12-month period following the date of enactment of this title, it shall be unlawful for any person to manufacture, import, or bottle for sale or distribution in the United States any alcoholic beverage unless the container of such beverage bears the following statement:

> *"GOVERNMENT WARNING: (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems.".*

(b) The statement required by subsection (a) of this section shall be located in a conspicuous and prominent place on the container of such beverage, as determined by the Secretary, shall be in type of a size determined by the Secretary, and shall appear on a contrasting background. The Secretary shall make such determinations within 90 days after the date of enactment of this title.

(c) Subsection (a) of this section shall not apply with respect to alcoholic beverages that are manufactured, imported, bottled, or labeled for export from the United States, or for delivery to a vessel or aircraft, as supplies, for consumption beyond the jurisdiction of the internal revenue laws of the United States: Provided, That this exemption shall not apply with respect to alcoholic beverages that are manufactured, imported, bottled, or labeled for sale, distribution, or shipment to members or units of the Armed Forces of the United States, including those located outside the United States.

(d) The Secretary shall—

(1) have the power to—

(A) ensure the enforcement of the provisions of this title, and

(B) issue regulations to carry out this title, and

(2) consult and coordinate the health awareness efforts of the labeling requirements of this title with the Surgeon General of the United States.

PREEMPTION

SEC. 205. No statement relating to alcoholic beverages and health, other than the statement required by section 204 of this title, shall be required under State law to be placed on any container of an alcoholic beverage, or on any box, carton, or other package, irrespective of the material from which made, that contains such a container.

REPORT TO CONGRESS

SEC. 206. If, after appropriate investigation and consultation with the Surgeon General carried out after the expiration of the 24-month period following the date of enactment of this title, the Secretary finds that available scientific information would justify a change in, addition to, or deletion of the statement, or any part thereof, set forth in section 204(a) of this title, the Secretary shall promptly report such information to the Congress together with specific recommendations for such amendments to this title as the Secretary determines to be appropriate and in the public interest.

CIVIL PENALTIES

SEC. 207. Any person who violates the provisions of this title shall be subject to a civil penalty of not more than $10,000, and each day shall constitute a separate offense.

INJUNCTION PROCEEDINGS; COMPROMISE OF LIABILITY

SEC. 208. (a) The several district courts of the United States are vested with jurisdiction, for cause shown, to prevent and restrain violations of this title upon the application of the Attorney General of the United States acting through the several United States attorneys in their several districts.

(b) The Secretary is authorized, with respect to any violation of this title, to compromise the liability arising with respect to such violation upon payment of a sum for each offense, to be collected by the Secretary and to be paid into the Treasury as miscellaneous receipts.

SEVERABILITY

SEC. 209. If any provision of this title or the application thereof to any person or circumstance is held invalid, the validity of the remainder of this title and this Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

EFFECTIVE DATE

SEC. 210. Except as provided in section 204(a), this title shall take effect on the date of its enactment into law.

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